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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,405

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Josef Neff

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EXAMINER

DEMILLE, DANTON D

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

03/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/596,405	Applicant(s) NEFF, JOSEF	
	Examiner Danton DeMille	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 15-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5-8-07, 6-12-06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 15-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15 it is not clear how much weight can be given the wherein clause at the end of the claim. The lift "may" travel on the guide rails and the lift "may" be fastened in a lockable manner. This language is conditional upon unknown circumstances. The same would apply to claim 26 and "may be provided".

In claim 18, the spring unit is recited as providing "lateral guiding of the vibration plate and prevents a lateral backing-away of the vibration plate with respect to the housing" however, it is not clear which direction is lateral.

Regarding claim 24, while the drive shaft passes laterally out of the housing and is provided with receivers at lateral ends, the drive shaft was not recited as having a plurality of ends. Typically drive shafts do not have ends.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 23, 28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hirt (US 6,932,778).

Hirt teaches a muscle stimulator comprising a foot plate 2, a column arranged perpendicularly on the foot plate and comprising two guide rails 1, a vibration unit 4 arranged on a lift 3. The lift 3 really does travel on the guide rails and absolutely is fastened in a lockable manner at different heights. The vibration unit 4 is located on a side of the column outside the guide rails.

Regarding claim 23, figures 6 and 7 show the vibration unit can be pivotable about a horizontal axis.

Regarding claim 28, figures 1 and 2 show two fork ends so that the vibration unit may travel down between the fork ends.

Claims 15, 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Epps et al. (US 6,290,660).

Epps teaches a foot plate at the bottom of column 54, a column arranged perpendicularly on the foot plate comprising two guide rails 54, 58, a vibration unit 15-42 arranged on a lift 14, wherein the lift may travel on the guide rails and may be fastened in a lockable manner at different heights by member 56.

Regarding claim 16, the vibration unit comprises a housing 14 with an intermediate base 41, a vibration plate 45 connected to the intermediate base 41 by way of at least one spring unit 42 and a drive shaft 16 comprising at least one eccentric 17, 18, which is pivotally connected to the vibration plate 48 via coupling rod 28.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Epps et al.

A programmable control is old and well known and would have been an obvious provision in Epps to be able to better control the operation of the device including the speed of operation and how long it operates.

Claims 22, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirt.

Hirt teaches leg supports 4 on which the legs rest. Hirt appears silent with regard to whether or not the leg rests are cushioned. Cushions are well known and would have been an obvious provision in Hirt so that one doesn't hurt the legs on a rigid support. Shaping the housing such that the cushion reaches at least partly into the housing is a matter of ergonomics.

Regarding claim 29, automating the means to vary the height would have been obvious to one of ordinary skill in order to automate something that is manual.

Regarding claims 30 and 31, rollers and skids are well known and to help transport this portable device would have been obvious to one of ordinary skill in the art.

Allowable Subject Matter

Claims 18-21 and 24-27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Unit: 3771

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974.

The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

26 March 2010

/Danton DeMille/

Danton DeMille
Primary Examiner
Art Unit 3771